

## § 9901.356

## 5 CFR Ch. XCIX (1–1–08 Edition)

implementing issuances regarding pay retention. Pay retention prevents a reduction in basic pay that would otherwise occur by preserving the former rate of basic pay within the employee's new pay band or by establishing a retained rate that exceeds the maximum rate of the new pay band. Local market supplements are not considered part of basic pay in applying pay retention.

(b) Pay retention will be based on the employee's rate of basic pay in effect immediately before the action that would otherwise reduce the employee's rate. A retained rate will be compared to the range of rates of basic pay applicable to the employee's position.

(c) Subject to any employee eligibility requirements the Secretary may prescribe, pay retention will apply when an employee is reduced in band through reduction in force (RIF), reclassification, or other appropriate circumstances, as specified in implementing issuances. Pay retention will be granted for a period of 2 years (that is, 104 weeks).

(d) Employees entitled to a retained rate will receive any performance payouts in the form of bonuses, rather than salary adjustments, as provided in § 9901.342(d)(6).

(e) Employees entitled to a retained rate will not receive minimum rate range adjustments under § 9901.323(a), but are entitled to receive any applicable local market supplement adjustments under § 9901.334(a).

### § 9901.356 Miscellaneous.

(a) Except in the case of an employee who does not receive a pay increase under § 9901.323 because of an unacceptable rating of record, an employee's rate of basic pay may not be less than the minimum rate of the employee's pay band.

(b) Except as provided in § 9901.355, an employee's rate of basic pay may not exceed the maximum rate of the employee's band rate range.

(c) The Secretary will follow the rules for establishing pay periods and computing rates of pay in 5 U.S.C. 5504 and 5505, as applicable. For employees covered by 5 U.S.C. 5504, annual rates of pay will be converted to hourly rates of pay in computing payments received by covered employees.

(d) The Secretary may promulgate implementing issuances that provide for a special increase prior to an employee's movement in recognition of the fact that the employee will not be eligible for a promotion increase under the GS system, if a DoD employee moves from the pay system established under this subpart to a GS position having a higher level of duties and responsibilities.

### PREMIUM PAY

#### § 9901.361 General.

(a) This section applies to eligible DoD employees and positions which would otherwise be covered by 5 U.S.C. chapter 55, subchapter V, subject to a determination by the Secretary under § 9901.102(b)(2). As provided in § 9901.303(a)(2), for employees covered by such a determination, the provisions of 5 U.S.C. chapter 55, subchapter V (except section 5545b), are waived or modified to the extent that the Secretary establishes alternative premium pay provisions for such employees in lieu of the provisions in 5 U.S.C. chapter 55, subchapter V.

(b) The Secretary may establish alternative or additional forms of premium pay, or make modifications in premium payments under 5 U.S.C. chapter 55, subchapter V (except section 5545b), for specified categories of employees through implementing issuances. The types of premium payments the Secretary may establish or modify include, but are not limited to—

(1) Overtime pay (excluding overtime pay under the Fair Labor Standards Act);

(2) Compensatory time off;

(3) Sunday, holiday, and night pay;

(4) Annual premium pay for standby duty and administratively uncontrollable overtime work;

(5) Availability pay for criminal investigators; and

(6) Hazardous duty differentials.

(c) The Secretary will determine the conditions of eligibility for the amounts of and the limitations on payments made under the authority of this section.